

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION**

In re:	}	
	}	
TERRY DWAYNE FOGARTY	}	Case No. 16-70005 - TMD
and HEATHER DIANE FOGARTY	}	(Chapter 13)
	}	
Debtors	}	

**TRUSTEE’S RESPONSE AND OBJECTION
TO DEBTOR’S MOTION TO MODIFY PLAN**

TO THE HONORABLE JUDGE TONY M. DAVIS:

COMES NOW Gary Norwood, Chapter 13 Trustee (hereinafter “Trustee”) and making this his response and objection to *Debtor’s Motion to Modify and First Request for Additional Attorney Fees* (docket #36) and would respectfully show as follows:

1. On September 20, 2017 Debtors filed their *Motion to Modify and First Request for Additional Attorney Fees* (docket #36) by and through their counsel of record.

2. Trustee responds and objects to the relief sought as follows:

(a) Trustee objects to the proposed modification of the Plan to the extent it seeks to avoid the current Plan arrears in the Debtors’ Plan payments by eliminating the amount owed on the Plan arrears from the Plan base;

(b) Trustee objects to the proposed modification of the Plan as it would reduce the Plan payments to such an extent that the Plan would fail to pay all remaining secured and administrative expenses in full. The Plan as modified appears, based upon information and belief, to fail to account for payments made to date on the secured creditor’s claims that are now (going forward) proposed to be satisfied by the surrender of collateral, thus causing miscalculations of the proposed plan treatment of claims; and

(c) Trustee would show that the Motion overstates the available payments to unsecured creditors in both the Plan as now confirmed and as proposed by the modification

motion. However, as the confirmed Plan would appear to pay approximately 5% of the allowed unsecured claims, as proposed by the Motion the proposed plan would pay nothing to the unsecured claims. As stated above, the new proposed plan base is insufficient to even pay all remaining secured claims, and thus nothing would remain for unsecured creditors.

WHEREFORE, the Trustee respectfully requests that the Plan modification be denied as proposed by Debtor's Motion, that the Motion be denied, and for such other and further relief as is proper.

Dated: October 10, 2017.

Respectfully submitted,
Gary Norwood
Chapter 13 Trustee
Post Office Box 2331
Midland, Texas 79702-2331
Telephone: (432) 686-9452
Facsimile: (432) 686-9460

By: /s/ Gary Norwood
Gary Norwood

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2017, I mailed by first class United States Mail, postage prepaid, copies of the foregoing Trustee's Response and Objection to following persons at the addresses shown:

DEBTOR

Terry Dwayne Fogarty
and Heather Diane Fogarty
1407 Oldcourse RD
Odessa TX 79765-8705

ATTORNEY FOR DEBTOR

Dorothy Lawrence/ Allen Chern Law
Attorney for Mr. and Mrs. Fogarty
28515 Ranch Road 12
Dripping Springs TX 78888620

UNITED STATES TRUSTEE

United States Trustee
PO Box 1539
San Antonio TX 78205-1539

/s/ Gary Norwood
Gary Norwood

TRUSTEE'S RESPONSE AND OBJECTION

Page -2-